

EXHIBIT A

**OSBORN
MALEDON**A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAWThe Phoenix Plaza
21st Floor
2929 North Central Avenue
Phoenix, Arizona 85012-2794P.O. Box 36379
Phoenix, Arizona 85067-6379Telephone 602.640.9000
Facsimile 602.640.9050

1 William J. Maledon, Atty. No. 003670
 2 Dawn L. Dauphine, Atty. No. 010833
 3 OSBORN MALEDON, P.A.
 4 2929 North Central Avenue, Suite 2100
 5 Phoenix, Arizona 85012-2794
 Telephone: (602) 640-9000
 Facsimile: (602) 640-9050
wmaledon@omlaw.com
ddauphine@omlaw.com

6 D. Scott Wise
 7 Kimberley D. Harris
 8 DAVIS POLK & WARDWELL
 9 450 Lexington Avenue
 New York, New York 10017
 Telephone: (212) 450-4000
 Facsimile: (212) 450-3800
d.wise@dpw.com
kharris@dpw.com

11 **Attorneys for Defendants AstraZeneca Pharmaceuticals LP and Zeneca Inc.**

12
 13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE DISTRICT OF ARIZONA

16 The State of Arizona *ex. rel.* Terry Goddard,)

17 Plaintiff,)

18 VS.)

19 Abbott Laboratories; Amgen Inc.; Apotthecon,)
 20 Inc.; AstraZeneca, PLC; AstraZeneca U.S.;)
 AstraZeneca Pharmaceuticals L.P.; Aventis)
 21 Pharmaceuticals, Inc.; Aventis Behring)
 L.L.C.; B. Braun Medical Inc.; Baxter)
 International Inc.; Baxter Healthcare)
 22 Corporation; Bayer Corporation; Bedford)
 Laboratories; Ben Venue Laboratories, Inc.;)
 23 Boehringer Ingelheim Pharmaceuticals, Inc.;)
 Biogen Idec U.S.; Bristol-Myers Squibb Co.;)
 24 Centocor, Inc.; Dey, Inc.; Fujisawa)
 Healthcare, Inc.; Fujisawa USA, Inc.; Gensia)
 25 Inc.; Gensia Sicor Pharmaceuticals, Inc.;)
 Glaxosmithkline, P.L.C.; Glaxowellcome,)
 26 Inc.; Hoechst Marion Roussel, Inc.; Immunex)

CASE NO. _____

NOTICE OF REMOVAL

Corporation; Janssen Pharmaceutica
 Products, L.P.; Johnson & Johnson; McNeil-
 PPC, Inc.; Merck & Co., Inc.; Oncology
 Therapeutics Network Corp.; Ortho Biotech;
 Pharmacia Corporation;
 Pharmacia & Upjohn, Inc.; Rhone-Poulenc
 Rorer, S.A.; Roxanne Laboratories, Inc.;
 Schering-Plough Corporation; Sicor, Inc.;
 Smithkline Beecham Corporation; TAP
 Pharmaceutical Products, Inc.; Warrick
 Pharmaceuticals Corporation; Watson
 Pharmaceuticals, Inc.; Zeneca, Inc. AND
 DOES 1 THROUGH 100; DOES 101-125;
 DOES 126-150 AND DOES 151-200

Defendants.

Pursuant to 28 U.S.C. § 1441 *et seq.*, all Defendants hereby notice removal of this civil action from the Superior Court of the State of Arizona in and for the County of Maricopa, to the United States District Court for the District of Arizona. This Court has removal jurisdiction because this is a civil action “of which the district courts have original jurisdiction” and an action “founded on a claim or right arising under . . . the laws of the United States.” 28 U.S.C. § 1441(a) - (b); *see* 28 U.S.C. § 1331. In particular, federal question jurisdiction exists because the State of Arizona’s claim to recover Medicare Part B co-payments raises a substantial federal question in that it requires the resolution of issues of federal law relating to the federal Medicare program. *See Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing*, 545 U.S. ___, 125 S. Ct. 2363 (June 13, 2005); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9, 28 (1983); *cf. State of Montana v. Abbott Labs., Inc.*, 266 F. Supp. 2d 250, 255-56 (D. Mass. 2003).

In further support of this Notice, Defendants allege:

1. On or about December 6, 2005, the State of Arizona filed the civil action captioned *The State of Arizona ex rel. Terry Goddard v. Abbott Laboratories*,

1 *et al.*, CV2005-018711, in the Superior Court of the State of Arizona in and for the
2 County of Maricopa.

3 2. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is a true
4 and correct copy of all substantive records and proceedings from the state court.

5 3. Pursuant to 28 U.S.C. § 1446(d), Defendants shall file a copy of this
6 Notice of Removal with the Clerk of the Superior Court of the State of Arizona in and
7 for the County of Maricopa, and serve Plaintiff and all other parties with this Notice
8 of Removal promptly after the filing of this Notice.

9 **I. THE STATE OF ARIZONA ACTION**

10 4. This case is virtually identical to numerous cases that have been
11 transferred from district courts throughout the country and consolidated in a
12 Multidistrict Litigation (“MDL”) proceeding, *In re Pharmaceutical Industry Average*
13 *Wholesale Price Litigation*, MDL No. 1456 (the “AWP MDL”), which is currently
14 pending before the Honorable Patti B. Saris in the United States District Court for the
15 District of Massachusetts.

16 5. Like this case, many of the cases now pending in the AWP MDL were
17 originally filed in state courts before removal to federal court and transfer to the AWP
18 MDL. The AWP MDL currently includes similar actions brought by the States of
19 Montana, Nevada, Kentucky, Illinois, and New York. Defendants will shortly notify
20 the Judicial Panel on Multidistrict Litigation that this action is closely related to those
21 pending before Judge Saris in the AWP MDL and thus should be treated as a “tag-
22 along action” within the meaning of the Rules of the Judicial Panel on Multidistrict
23 Litigation.

24 6. The two-count Complaint alleges claims against dozens of
25 pharmaceutical manufacturers. It alleges, in part, that each Defendant pharmaceutical
26

1 manufacturer caused persons and entities in the State of Arizona, including private
2 individuals, third-party payors and the Arizona Health Care Cost Containment System
3 (the "Arizona Medicaid Program"), to overpay for that company's pharmaceutical
4 products by reporting inflated average wholesale price ("AWP") and other pricing
5 information, which allegedly serves as a basis for payments by such persons and
6 entities and reimbursement rates by the Arizona Medicaid Program for prescription
7 pharmaceuticals. Cmplt. ¶¶ 1-16.

8 7. Although the State of Arizona is the named plaintiff in this action, the
9 State specifically purports to prosecute this action on behalf of its citizens and
10 Arizona entities who allegedly have paid inflated prices for prescription
11 pharmaceuticals covered by Medicare. Cmplt. ¶¶ 9-13. The State alleges that by
12 reporting allegedly inflated AWP pricing information, Defendants have caused
13 Medicare Part B beneficiaries in Arizona to make inflated Medicare Part B co-
14 payments for Defendants' prescription pharmaceuticals, because, until recently,
15 Medicare co-payments for prescription pharmaceuticals covered under Part B were
16 based upon published AWP. Cmplt. ¶¶ 9-10, 133-155; *see also* 42 U.S.C. §§
17 1395l(a), 1395u(o). The State also alleges that by reporting allegedly inflated AWP
18 pricing information, Defendants have caused overpayment for physician-administered
19 pharmaceuticals outside of the Medicare Part B context as well as self-administered
20 pharmaceuticals for which AWP is used as a benchmark. Cmplt. ¶¶ 11-13, 156-174.
21 The State seeks to recover the amounts allegedly overpaid for increased
22 pharmaceutical costs, including Medicare Part B co-payments. Cmplt. ¶¶ 18-21.

23 8. The Complaint purports to allege claims under the Unlawful Practices
24 Section of the Arizona Consumer Fraud Act and provisions of the Arizona
25 Racketeering Statute. The Plaintiff seeks various legal and equitable remedies.
26

II. REMOVAL BASED ON FEDERAL QUESTION JURISDICTION

9. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 because it arises under the laws of the United States. Specifically, federal question jurisdiction exists because the State of Arizona's claim to recover Medicare Part B co-payments on behalf of Arizona Medicare Part B beneficiaries raises a substantial federal question in that it requires the resolution of issues of federal law relating to the federal Medicare program, namely the meaning of AWP in the federal Medicare statute and regulations. *See Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing*, 545 U.S. ____, 125 S. Ct. 2363, 2368 (June 13, 2005) (removal jurisdiction exists where the meaning of a federal statute is an essential element of a state law claim); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9, 28 (1983); *cf State of Montana v. Abbott Labs., Inc.*, 266 F. Supp. 2d 250, 255-56 (D. Mass. 2003).

10. The state law claims asserted by the State relating to Medicare Part B co-payments necessarily depend on an interpretation of the federal statute and regulations governing Medicare Part B reimbursement, which until recently pegged such reimbursement (and the corresponding 20% co-payment) to a pharmaceutical's AWP. Indeed, as Judge Saris has already ruled, a plaintiff in an AWP action cannot recover on its state law claims relating to Medicare Part B co-payments unless it proves its fundamental assertion that the AWP was "inflated" as the term AWP has been interpreted under the federal Medicare reimbursement statute and regulations. *See State of Montana v. Abbott Laboratories, Inc.*, 266 F. Supp. 2d 250, 255-56 (D. Mass. 2003) (holding that an essential element of the State of Minnesota's claims relating to Medicare Part B co-payments "is proof of a discrepancy between the

1 AWP's reported by [defendant] and the meaning of AWP under the Medicare
2 statute.”).

3 11. This Court has supplemental jurisdiction over Plaintiff's non-federal
4 claims pursuant to 28 U.S.C. § 1367.

5 **III. CONSENT TO REMOVAL**

6 12. All Defendants consent to and have joined in this Notice of Removal.

7 13. No Defendant waives any defense to the Complaint, including but not
8 limited to lack of service, improper service or lack of personal jurisdiction.

9 **IV. REMOVAL IS TIMELY**

10 14. Removal of this case is timely. The Complaint was not served on any
11 Defendant before December 8, 2005. This Notice of Removal is filed on January 5,
12 2006, within thirty days of December 8, 2005. *See* 28 U.S.C. § 1446(b).

13 **WHEREFORE**, Defendants notice the removal of this case to the United
14 States District Court for the District of Arizona pursuant to 28 U.S.C. §§ 1331 & 1441
15 *et seq.*

16
17 **RESPECTFULLY SUBMITTED** this 5th day of January, 2006,

18
19 William J. Maledon
20 Dawn L. Dauphine
21 OSBORN MALEDON, P.A.
22 2929 North Central Avenue
23 Suite 2100
24 Phoenix, Arizona 85012

25 **Attorneys for Defendants AstraZeneca Pharmaceuticals LP**
26 **And Zeneca Inc.¹**

¹ The Complaint also names AstraZeneca U.S. and AstraZeneca PLC as separate defendants. AstraZeneca U.S. does not exist as an entity and has not been served. AstraZeneca PLC is a public limited holding company organized under the laws of England and Wales, must be served under the Hague Convention, has not been so

By s/William J. Maledon
William J. Maledon

Of Counsel for These Defendants:

D. Scott Wise
Kimberley D. Harris
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 450-3800
d.wise@dpw.com
kharris@dpw.com

served, and specifically reserves all arguments as to insufficient service. Moreover, in a related case filed in this court, *Swanston v. TAP Pharmaceutical Products, et al.*, Maricopa County Superior Court CV2002-004988, the Court dismissed AstraZeneca PLC for lack of personal jurisdiction. At any rate, all AstraZeneca entities whose consent to removal is required to effectuate removal do consent to removal.

1 Randy Papetti, Atty. No. 014586
2 LEWIS AND ROCA LLP
3 40 N. Central Ave, Suite 1900
4 Phoenix, AZ 85004
5 602-262-5337
6 602-734-3865 (fax)
7 Rpapetti@lrlaw.com

8
9 **Counsel for Abbott Laboratories and TAP Pharmaceutical
10 Products Inc.**

11 By s/Randy Papetti
12 Randy Papetti

13
14 **Of Counsel for These Defendants:**

15 James R. Daly
16 J. Ryan Mitchell
17 JONES DAY
18 77 W. Wacker Drive
19 Chicago, IL 60601-1692
20 312-782-3939
21 312-782-8585 (fax)
22 jrdaly@jonesday.com
23 jrmitchell@jonesday.com

24 Toni-Ann Citera
25 JONES DAY
26 222 East 41st Street
New York, New York 10017-6702
212-326-3939
212-755-7306 (fax)
tcitera@jonesday.com

1 Andrew S. Gordon, Atty. No. 003660
2 COPPERSMITH GORDON SCHERMER OWENS & NELSON
3 PLC
4 2800 North Central Avenue
5 Suite 1000
6 Phoenix, AZ 85004
7 602-224-0999
8 andy@cgson.com

9
10 **Attorneys for Defendant Amgen Inc.**

11 By s/Andrew S. Gordon
12 Andrew S. Gordon

13
14 **Of Counsel for This Defendant:**

15 Steven F. Barley
16 Joseph H. Young
17 HOGAN & HARTSON LLP
18 111 South Calvert Street
19 Suite 1600
20 Baltimore, MD 21202
21 410-659-2700
22 sfbarley@hhlaw.com
23 jhyoung@hhlaw.com
24
25
26

1 Pamela M. Overton, No. 009062
2 Aaron Schepler, No. 019985
3 GREENBERG TRAURIG, LLP
4 2375 East Camelback Road, Suite 700
5 Phoenix, AZ 85016
6 (602) 445-8000
7 overtonp@gtlaw.com
8 Scheplera@gtlaw.com

Attorneys for Defendants Aventis Pharmaceuticals Inc.²

9 By s/Pamela M. Overton
10 Pamela M. Overton

11 **Of Counsel for These Defendants:**

12 Michael L. Koon
13 Joseph G. Matye
14 SHOOK, HARDY & BACON
15 2555 Grand Boulevard
16 Kansas City, MO 64108-2613
17 (816) 474-6550
18 mkoon@shb.com
19 jmatye@shb.com

20
21
22
23
24 ² The Complaint also names Rhone-Poulenc Rorer, S.A. and Hoechst Marion
25 Roussel, Inc. as separate defendants. Rhone-Poulenc Rorer, S.A. and Hoechst Marion
26 Roussel, Inc. do not exist as separate entities and have not been served. In any event,
Aventis Pharmaceuticals Inc. and all related entities, whether or not properly named
or served, consent to removal.

1 Pamela M. Overton, No. 009062
2 Aaron Schepler, No. 019985
3 GREENBERG TRAURIG, LLP
4 2375 East Camelback Road, Suite 700
5 Phoenix, AZ 85016
6 (602) 445-8000
7 overtonp@gtlaw.com
8 Scheplera@gtlaw.com

**Attorneys for Defendant Aventis Behring LLC (now known
as ZLB Behring LLC)**

By s/Pamela M. Overton
Pamela M. Overton

Of Counsel for This Defendant:

Jonathan T. Rees
Gregory M. Petouvis
HOGAN & HARTSON LLP
555 13th Street, N.W.
Washington, DC 2004
(202) 637-5600
JTRees@hhlaw.com
GMPetouvis@hhlaw.com

1 Robert P. Simbro, No. 007501
2 SIMBRO & WHITE, P.C.
3 8767 E. Via de Commercio
4 Suite 103
5 Scottsdale, Arizona 85258
6 Telephone: (480) 607-0500
7 Facsimile: (480) 607-0400
8 rsimbro@simbrowhiteandbarfield.com

Attorneys For B. Braun Medical Inc.

9 By s/Robert P. Simbro
10 Robert P. Simbro

11 **Of Counsel for This Defendant:**

12 Daniel F. Attridge, P.C.
13 KIRKLAND & ELLIS LLP
14 655 15th Street, N.W.
15 Washington, DC 20005
16 Telephone: (202) 879-5012
17 Facsimile: (202) 654-9555
18 dattridge@kirkland.com

Vincent J. Montell, No. 014236
Karl A. Fazio, No. 018771
BOWMAN AND BROOKE LLP
Suite 1600, Phoenix Plaza
2901 North Central Avenue
Phoenix, Arizona 85012-2761
Direct: (602) 643-2300
Fax: (602) 248-0947
Vince.Montell@phx.bowmanandbrooke.com
Karl.Fazio@phx.bowmanandbrooke.com

**Attorneys for Baxter Healthcare Corporation and Baxter
International Inc.**

By s/Vincent J. Montell
Vincent J. Montell

Of Counsel for These Defendants:

Merle M. DeLancey
Tina Ducharme Reynolds
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, NW
Washington, DC 20037
Direct: (202) 785-9700
Fax: (202) 887-0689
delanceym@dsmo.com
reynoldst@dsmo.com

1 D. Samuel Coffman, No. 011428
2 MARISCAL WEEKS McINTYRE & FRIEDLANDER PA
3 2901 North Central, Suite 200
4 Phoenix, Arizona 85012
5 602-285-5000
6 sam.coffman@mwmf.com

Attorneys for Defendant Bayer Corporation

By s/D. Samuel Coffman
D. Samuel Coffman

Of Counsel for This Defendant:

Richard D. Raskin
Michael P. Doss
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
312.853.7000
312.853.7036 (fax)
rraskin@sidley.com
mdoss@sidley.com

1 John E. DeWulf, No. 006850
2 Darlene M. Wauro, No. 014697
3 ROSHKA, DeWULF & PATTEN, PLC
4 400 East Van Buren
5 Suite 800
6 Phoenix, Arizona 85004
7 602-256-6100
8 dewulf@rdp-law.com
9 wauro@rdp-law.com

10 Helen E. Witt
11 Maria Pellegrino Rivera, No. 018124
12 KIRKLAND & ELLIS, LLP
13 200 East Randolph Drive
14 Chicago, Illinois 60601-3363
15 312-861-2000
16 hwitt@Kirkland.com
17 mriviera@Kirkland.com

18 **Attorneys for Defendants Ben Venue Laboratories, Inc.,**
19 **Boehringer Ingelheim Pharmaceuticals, Inc., and Roxane**
20 **Laboratories, Inc.³**

21 By s/John E. DeWulf
22 John E. DeWulf

23
24 ³ The Complaint also names Bedford Laboratories as a separate defendant.
25 Bedford Laboratories is not a separate entity and has not been served. Rather,
26 Bedford Laboratories is a division of Ben Venue Laboratories, Inc., which has also
been named as a defendant. In any event, all Boehringer-related entities, whether or
not properly named or served, consent to removal.

1 Andrew M. Jacobs, No. 021146
2 Adrienne S. Ehrhardt, No. 022429
3 SNELL & WILMER L.L.P.
4 One South Church Avenue
5 Suite 1500
6 Tucson, Arizona 85701
7 520-882-1200
8 FAX: 520-884-1294
9 ajacobs@swlaw.com
10 aehrhadt@swlaw.com

11 **Attorneys for Defendant Biogen Idec, Inc. (incorrectly named**
12 **as Biogen IDEC U.S.)**

13 By s/Andrew M. Jacobs
14 Andrew M. Jacobs

15 **Of Counsel for this Defendant:**

16 James C. Burling
17 Maura T. Healey
18 Kimberly I. Friday
19 WILMER CUTLER PICKERING HALE AND DORR LLP
20 60 State Street
21 Boston, MA 02109
22 Telephone: (617) 526-6000
23 Facsimile: (617) 526-5000
24 james.burling@wilmerhale.com
25 maura.healey@wilmerhale.com
26 kim.friday@wilmerhale.com

1 George Brandon, Arizona Bar No. 017947
2 Andrea L. Marconi, Arizona Bar No. 022577
3 SQUIRE, SANDERS & DEMPSEY L.L.P.
4 Two Renaissance Square
5 40 North Central Avenue, Suite 2700
6 Phoenix, AZ 85004-4498
7 Telephone: 602.528.4000
8 Facsimile: 602.253.8129
9 gbrandon@ssd.com
10 amarconi@ssd.com

11 **Attorneys for Defendants Apothecan, Inc., Bristol-Myers**
12 **Squibb Co., and Oncology Therapeutics Network Corp.**

13 By s/George Brandon
14 George Brandon

15 **Of Counsel for These Defendants:**

16 Steven M. Edwards
17 Lyndon M. Tretter
18 HOGAN & HARTSON L.L.P.
19 875 Third Avenue
20 New York, NY 10022
21 Telephone: 212.918.3000
22 Facsimile: 212.918.3100
23 SMEdwards@HHLAW.com
24 LMTretter@HHLAW.com
25
26

1 Don Bivens, No. 005134
2 Paul L. Stoller, No. 016773
3 BIVENS & NORE, P.A.
4 3003 N. Central Avenue, #1200
5 Phoenix, AZ 85012
6 (602) 604-2200
7 dwbivens@bivens-nore.com
8 plstoller@bivens-nore.com

Attorneys for Defendant Dey, Inc.

9 By s/Don Bivens
10 Don Bivens

11 **Of Counsel for This Defendant:**

12 Christopher C. Palermo
13 KELLEY DRYE & WARREN LLP
14 101 Park Avenue
15 New York, N.Y. 10178
16 (212) 808-7789
17 cpalermo@kelleydrye.com
18
19
20
21
22
23
24
25
26

1 Martin A. Aronson, Arizona Bar No. 9005
2 MORRILL & ARONSON, P.L.C.
3 One East Camelback Road, Suite 340
4 Phoenix, Arizona 85012
5 Telephone: (602) 263-8993
6 Facsimile: (602) 285-9544
7 maronson@maazlaw.com

8 **Attorneys for Defendants Fujisawa Healthcare, Inc.**
9 **and Fujisawa USA, Inc.**

10 By s/Martin Aronson
11 Martin Aronson

12 **Of Counsel for These Defendants:**

13 Michael T. Scott, Esq.
14 REED SMITH LLP
15 2500 One Liberty Place
16 1650 Market Street
17 Philadelphia, PA 19103-7301
18 Telephone: (215) 851-8100
19 Facsimile: (215) 851-1420
20 MScott@reedsmith.com

21 Andrew L. Hurst, Esq.
22 Lasagne A. Wilhite, Esq.
23 REED SMITH LLP
24 1301 K Street, N.W.
25 Suite 1100 - East Tower
26 Washington, D.C. 20005
Telephone: (202) 414-9200
Facsimile: (202) 414-9299
AHurst@reedsmith.com
LWilhite@reedsmith.com

1 Michael K. Kennedy, No. 004224
2 GALLAGHER & KENNEDY P.A.
2575 E. Camelback Road, Suite 1100
3 Phoenix, AZ 85016
Telephone: (602) 530-8000
4 Facsimile: (602) 530-8500
mkk@gknet.com

5 **Attorneys for Defendant Immunex Corporation**

6
7 By s/Michael K. Kennedy
Michael K. Kennedy

8
9 **Of Counsel for This Defendant:**

10 David J. Burman
Kathleen M. O'Sullivan
11 PERKINS COIE LLP
1201 Third Avenue, Suite 4800
12 Seattle, WA 98101-3099
Telephone: (206) 359-8000
13 Facsimile: (206) 359-9000
DBurman@perkinscoie.com
14 KOSullivan@perkinscoie.com

1 Mary G. Pryor, No. 016709
2 THE CAVANAGH LAW FIRM, P.A.
3 1850 North Central Avenue, Suite 2400
4 Phoenix, Arizona 85004-4527
5 (602) 322-4035
6 mpryor@cavanaghlaw.com

**Attorneys for Defendants Centocor, Inc., Janssen
Pharmaceutica LLP, Johnson & Johnson, McNeil PPC, and
Ortho Biotech Products LLP**

By s/Mary G. Pryor
Mary Pryor

Of Counsel for These Defendants:

William F. Cavanaugh, Jr.
Andrew D. Schau
PATTERSON, BELKNAP, WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036-6710
(212) 336-2000
adschau@pbwt.com

1 John R. Dacey, Esq., Arizona State Bar No. 004962
2 James A. Craft, Esq., Arizona State Bar No. 005145
3 GAMMAGE & BURNHAM
4 Two North Central Avenue, 18th Floor
5 Phoenix, AZ 85004
6 Telephone (602) 256-0566
7 Facsimile (602) 256-4475
8 Jdacey@gblaw.com
9 jcrafft@gblaw.com

10 **Attorneys For Defendant Merck & Co., Inc.**

11 By s/John R. Dacey
12 John R. Dacey

13 **Of Counsel for This Defendant:**

14 John M. Townsend, Esq.
15 Robert P. Reznick, Esq.
16 Robert B. Funkhouser, Esq.
17 HUGHES HUBBARD & REED LLP
18 1775 I Street, N.W.
19 Washington, DC 20006-2401
20 Telephone: (202) 721-4600
21 Facsimile: (202) 721-4646
22 townsend@hugheshubbard.com
23 reznick@hugheshubbard.com
24 funkhous@hugheshubbard.com

1 Barry D. Halpern, No. 005441
2 Stephanie V. Hackett, No. 019353
3 Joseph G. Adams, No. 018210
4 SNELL & WILMER L.L.P.
5 One Arizona Center
6 400 E. Van Buren
7 Phoenix, AZ 85004-2204
8 (602) 382-6000
9 FAX: (602) 382-6070
10 bhalpern@swlaw.com
11 shackett@swlaw.com
12 jgadams@swlaw.com

13 **Attorneys for Defendants Pharmacia Corporation and**
14 **Pharmacia & Upjohn, Inc.**

15 By s/Stephanie V. Hackett
16 Stephanie V. Hackett

17 **Of Counsel for These Defendants:**

18 John C. Dodds
19 MORGAN, LEWIS & BOCKIUS LLP
20 1701 Market Street
21 Philadelphia, PA 19103-2921
22 Telephone: 215.963.5000
23 Facsimile: 215.963.5001
24 jdodds@morganlewis.com

25 Scott A. Stempel
26 J. Clayton Everett, Jr.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: 202.739.3000
Facsimile: 202.739.3001
sstempel@morganlewis.com
jeverett@morganlewis.com

1 Lydia A. Jones, No. 017178
2 ROGERS & THEOBALD, LLP
3 The Camelback Esplanade
4 8th Floor
5 2425 East Camelback Road
6 Phoenix, Arizona 85016
7 Tel: (602) 852-5582
8 Fax: (602) 852-5570
9 laj@rogerstheobald.com

6 **Attorneys for Defendants Sicor Inc. f/d/b/a Gensia, Inc.,**
7 **Gensia Sicor Pharmaceuticals Inc.**

8 By s/Lydia A. Jones
9 Lydia A. Jones

10 **Of Counsel for these Defendants:**

11 Elizabeth I. Hack, Esq.
12 SONNENSCHN NATH & ROSENTHAL LLP
13 1301 K Street, NW, Suite 600 East Tower
14 Washington, DC 20005
15 Tel: (202) 408-9236
16 Fax: (202) 408-6399
17 ehack@sonnenschein.com

1 Robert W. Shely, No. 014261
2 Rodney W. Ott, No. 016686
3 BRYAN CAVE LLP
4 Two North Central Avenue, Suite 2200
5 Phoenix, Arizona 85254
6 Tel: 602-364-7000
7 Fax: 602-364-7070
8 rwshely@bryancave.com
9 rwott@bryancave.com

10 **Attorneys for SmithKline Beecham Corporation d/b/a**
11 **GlaxoSmithKline⁴**

12 By s/Rodney W. Ott
13 Rodney W. Ott
14
15
16
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20 ⁴ The Complaint names GlaxoSmithKline plc, Glaxo Wellcome, Inc. and
21 SmithKline Beecham Corp. as separate defendants. Glaxo Wellcome, Inc. and
22 SmithKline Beecham Corp. have merged. In the United States, "SmithKline
23 Beecham Corporation" is the remaining corporation, and it is doing business as
24 "GlaxoSmithKline." Thus, the defendants named as Glaxo Wellcome, Inc. and
25 SmithKline Beecham Corp. are both appearing under the correct corporate name of
26 SmithKline Beecham Corporation, d/b/a GSK. Named defendant GlaxoSmithKline
plc is a holding company with no employees organized under the laws of England and
Wales. GlaxoSmithKline plc was not involved in the matters raised by the
Complaint, can only be properly served under the Hague Convention, has not been
served, and specifically reserves all arguments as to insufficient service. At any rate,
GSK and all related entities, whether or not properly named or served, consent to
removal.

1 Andrew F. Halaby, No.017251
2 Adam E. Lang, No. 022545
3 SNELL & WILMER
4 One Arizona Center
5 Phoenix, Arizona 85004-2202
6 Telephone (602) 382-6000
7 Facsimile (602) 382-6070
8 ahalaby@swlaw.com
9 alang@swlaw.com

10 **Attorneys for Defendants Warrick Pharmaceuticals**
11 **Corporation and Schering-Plough Corporation**

12 By s/Andrew F. Halaby
13 Andrew F. Halaby

14 **Of Counsel for These Defendants:**

15 John T. Montgomery
16 Brien T. O'Connor
17 ROPES & GRAY LLP
18 One International Place
19 Boston, MA 02110-2624
20 Telephone (617) 951-7000
21 Facsimile (617) 951-7050
22 john.montgomery@ropesgray.com
23 brien.o'connor@ropesgray.com

24 J. Steven Baughman
25 ROPES & GRAY LLP
26 One Metro Center
700 12th Street, N.W., Suite 900
Washington, DC 20005-3948
Telephone (202) 508-4600
Facsimile (202) 508-4650
steven.baughman@ropesgray.com

1 Winn L. Sammons, No. 005500
2 SANDERS & PARKS, P.C.
3 3030 N. 3rd Street, Suite 1300
4 Phoenix, AZ 85012
5 (602) 532-5786
6 Winn.Sammons@SandersParks.com

Attorneys for Watson Pharmaceuticals, Inc.

7 By s/Winn L. Sammons
8 Winn L. Sammons

9 **Of Counsel for this Defendant:**

10 Douglas B. Farquhar
11 Michelle L. Butler
12 HYMAN, PHELPS, & McNAMARA, P.C.
13 700 Thirteenth Street, N.W., Suite 1200
14 Washington, D.C. 20005
15 (202) 737-5600
16 (202) 737-9329 (facsimile)
17 dbf@hpm.com
18 mlb@hpm.com
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing:

I hereby certify that on January 5, 2006, I served the attached document (**minus Exhibit A - which consists of the documents previously filed in Superior Court**) by mail on the following:

Terry Goddard
Attorney General
Ann Thompson Uglietta
Assistant Attorney General
Consumer Protection and Advocacy Section
1275 West Washington
Phoenix, Arizona 85007-2997

Steve W. Berman
Robert B. Carey
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101

Attorneys for Plaintiff

s/Deborah B. Dunn